

1 Richard H. Klapper (*pro hac vice*)
(klapperr@sullcrom.com)
2 SULLIVAN & CROMWELL LLP
125 Broad Street
3 New York, New York 10004-2498
Telephone: (212) 558-3555
4 Facsimile: (212) 291-9083

5 Brendan P. Cullen (SBN 194057)
(cullenb@sullcrom.com)
6 SULLIVAN & CROMWELL LLP
1870 Embarcadero Road
7 Palo Alto, California 94303
Telephone: (650) 461-5600
8 Facsimile: (650) 461-5700

9 Christopher M. Viapiano (*pro hac vice*)
(viapianoc@sullcrom.com)
10 SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W., Suite 700
11 Washington, D.C. 20006
Telephone: (202) 956-6985
12 Facsimile: (202) 956-7056

13 Gilbert R. Serota (SBN 75305)
(gilbert.serota@apks.com)
14 ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center
15 San Francisco, California 94111
Telephone: (415) 471-3170
16 Facsimile: (415) 471-3400

17 *Counsel for Nominal Defendant*
18 *Wells Fargo & Company*

19 UNITED STATES DISTRICT COURT
20 NORTHERN DISTRICT OF CALIFORNIA

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25 **IN RE WELLS FARGO & COMPANY**
SHAREHOLDER DERIVATIVE
26 **LITIGATION**
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Lead Case No. 3:16-cv-05541-JST

**WELLS FARGO & COMPANY'S
REQUEST FOR JUDICIAL NOTICE IN
SUPPORT OF ITS MOTION TO DISMISS
THE CONSOLIDATED AMENDED
VERIFIED STOCKHOLDER
DERIVATIVE COMPLAINT FOR
FAILURE TO ADEQUATELY PLEAD
DEMAND FUTILITY**

The Honorable Jon S. Tigar

Hearing: May 4 at 2:00 p.m.

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 Pursuant to Fed. R. Evid. 201(b), nominal defendant Wells Fargo & Company (“Wells
3 Fargo”) hereby requests that the Court take judicial notice of all of the exhibits attached to the
4 accompanying Declaration of Brendan P. Cullen in Support of Wells Fargo & Company’s Motion to
5 Dismiss the Consolidated Amended Verified Stockholder Derivative Complaint for Failure to
6 Adequately Plead Demand Futility (the “Declaration”).

7 **DISCUSSION**

8 Pursuant to Fed. R. Evid. 201(b), the documents attached as exhibits to the
9 Declaration are offered in support of Wells Fargo’s Motion to Dismiss the Consolidated Amended
10 Verified Stockholder Derivative Complaint and are the proper subject of judicial notice.

11 **I. DOCUMENTS REFERENCED IN THE COMPLAINT (EXHIBITS A, D-E)**

12 The article published by *The Los Angeles Times* on December 21, 2013 (Ex. A), the
13 Comptroller of the Currency’s Consent Order in the Matter of Wells Fargo Bank, N.A. (Ex. D), and
14 the sworn testimony of Wells Fargo’s former Chairman and CEO John G. Stumpf before the U.S.
15 Senate Committee on Banking, Housing and Urban Affairs on September 20, 2016 (Ex. E) are
16 appropriate for judicial notice because Plaintiffs repeatedly cite and quote from these documents in
17 their Complaint. *In re Calpine Corp. Sec. Litig.*, 288 F. Supp. 2d 1054, 1075 (N.D. Cal. 2003)
18 (taking judicial notice of documents that “Plaintiffs expressly cite and quote from . . . in the
19 [complaint]”). Plaintiffs repeatedly reference these documents: (1) The *L.A. Times* article is
20 referenced in Compl. ¶¶ 37-40, 42, 45, 124 n.52, 163, 169-170, 172, 179, 183, 256, 342, 368, 498
21 and 510; (2) the Comptroller of the Currency’s Consent Order is referenced in Compl. ¶ 422 n.200
22 (including link to the Consent Order); and (3) Stumpf’s Senate testimony is referenced in Compl.
23 ¶¶ 16, 41, 160, 200, 258-59, 428-32, and 516.

24 **II. SECURITIES AND EXCHANGE COMMISSION FILINGS (EXHIBITS B, F-I, K-
25 L, N-P)**

26 The documents filed with the Securities and Exchange Commission (“SEC”) are
27 publicly accessible and on file with the SEC, and they are thus a proper subject of judicial notice
28 under Fed. R. Evid. 201(b)(2), which provides for judicial notice of facts that “can be accurately and

readily determined from sources whose accuracy cannot reasonably be questioned.” Courts regularly take judicial notice of SEC filings in deciding motions to dismiss. *See In re Copper Mountain Sec. Litig.*, 311 F. Supp. 2d 857, 863 (N.D. Cal. 2004) (“Judicial notice of [SEC filings] is proper.”); *In re Calpine Sec. Litig.*, 288 F. Supp. 2d at 1076 (“a court may take judicial notice of public filings when adjudicating a motion to dismiss”).

III. DOCUMENTS FROM GOVERNMENT WEBSITES (EXHIBITS C, Q-T)

Documents containing undisputed information available on a government website also are a proper subject of judicial notice. Exhibits C, Q, R, T, and S contain material from the Bureau of Labor Statistics, the Federal Deposit Insurance Corporation, the U.S. Census Bureau, the Center for Disease Control and PACER. “A court can properly take notice of undisputed information available on a government website.” *Michael v. New Century Fin. Servs.*, 65 F. Supp. 3d 797, 803 (N.D. Cal. 2014) (taking judicial notice of “a document from the website of the Office of the Comptroller of the Currency”); *see also Daniels-Hall v. Nat’l Educ. Ass’n*, 629 F.3d 992, 998-99 (9th Cir. 2010) (taking judicial notice of information from websites “as it was made publicly available by government entities . . . , and neither party disputes the authenticity of the web sites or the accuracy of the information displayed therein”); *Ries v. Hornell Brewing Co., Inc.*, 2010 WL 2943860, at *5 n.3 (N.D. Cal. July 23, 2010) (taking judicial notice of a document available on the FDA’s website).

IV. PUBLICLY AVAILABLE NEWS RELEASE (EXHIBIT M)

The news release titled “Wells Fargo Announces Actions Based on Retail Banking Sales Practices Investigation,” released by Wells Fargo on February 21, 2017 is a proper subject of judicial notice. Defendant submits this news release to show that the information contained in it was published and publicly available as of the date of publication, which is a proper subject of judicial notice. *See Von Saher v. Norton Simon Museum of Art at Pasadena*, 592 F.3d 954, 960 (9th Cir. 2010) (“Courts may take judicial notice of publications introduced to indicate what was in the public realm at the time”) (citation and internal quotation marks omitted); *In re American Apparel, Inc. S’holder Derivative Litig.*, 2012 WL 9506072, at *19 (C.D. Cal. July 31, 2012) (“Courts in the Ninth Circuit routinely take judicial notice of press releases.”).

V. COURT FILINGS (EXHIBITS J, T)

The “Order re: Joint Stipulation Relating and Consolidating Actions and Re Defendants’ Response to Complaint and Appointing Lead Counsel” in *In re Wells Fargo & Company Derivative Litigation*, CGC 15-554407 (Cal. Super. Ct.) and the table showing the results of a search in the PACER database of federal court cases are also proper subjects of judicial notice because they are public court records. *See Michael*, 65 F. Supp. 3d at 804 (taking judicial notice of documents “publicly filed with a court within this state”); *In re American Apparel, Inc. S’holder Derivative Litig.*, 2012 WL 9506072, at *19 (“Court filings are matters of public record, and thus are proper subjects of judicial notice.”); *Temprano v. Sanders*, 2010 WL 4056125, at *2 (C.D. Cal. Sept. 7, 2010) (taking “judicial notice of the results obtained through . . . searches . . . of the PACER database”).

VI. CONCLUSION

For the foregoing reasons, Wells Fargo respectfully requests that the Court take judicial notice of Exhibits A-T attached to the Declaration.

DATED: March 17, 2017

Respectfully submitted,

/s Brendan P. Cullen

Richard H. Klapper (*pro hac vice*)
(klapperr@sullcrom.com)
SULLIVAN & CROMWELL LLP
125 Broad Street
New York, New York 10004-2498
Telephone: (212) 558-3555
Facsimile: (212) 291-9083

Brendan P. Cullen (SBN 194057)
SULLIVAN & CROMWELL LLP
1870 Embarcadero Road
Palo Alto, California 94303-3308
Telephone: (650) 461-5600
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Christopher M. Viapiano (*pro hac vice*)
(viapianoc@sullcrom.com)
SULLIVAN & CROMWELL LLP
1700 New York Avenue, N.W., Suite 700
Washington, D.C. 20006
Telephone: (202) 956-6985
Facsimile: (202) 956-7056

Gilbert R. Serota (SBN 75305)
(gilbert.serota@apks.com)
ARNOLD & PORTER KAYE SCHOLER LLP
Three Embarcadero Center
San Francisco, California 94111
Telephone: (415) 471-3170
Facsimile: (415) 471-3400

*Counsel for Nominal Defendant
Wells Fargo & Company*